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November 19, 2015

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Public Record

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Conrail Abandonment in Lehigh County, PA, AB-167 (Sub-No. 623N)

Dear Ms. Brown:

Norfolk Southern Railway Company (“NSR”) is writing in response to James Riffin’s November 2, 2015 motion to strike (“Motion”) filed in the above captioned proceeding.¹ Contrary to Riffin’s claims, the line for which Conrail filed its consummation notice on October 5, 2015 was never transferred to NSR. As such, the line was properly abandoned consistent with the Interstate Commerce Commission’s (“ICC”) July 19, 1984 decision (“July 19th Decision”).²

As the Board is well aware, pursuant to the July 19th Decision, Conrail was authorized by the ICC to abandon a portion of the Lehigh Secondary Track in Catasauqua, Pennsylvania. The ICC approved Conrail’s abandonment application fully aware that the abandonment could not be consummated until such time as the ICC approved the discontinuance of trackage rights

¹ NSR believes it is unnecessary to formally intervene given that Riffin’s Motion is directed to both Conrail and NSR. Nonetheless, if necessary, pursuant to 49 C.F.R. §1112.4, NSR hereby petitions to intervene. NSR opposes the Motion and believes it should be rejected. NSR’s intervention will not unduly disrupt the schedule, as this filing is a timely reply to the Motion, and will not unduly broaden the issues raised in this proceeding. Indeed, the issue of whether NSR owns the subject line, which is the subject of this reply, is the subject of the Motion.

² Conrail Abandonment in Lehigh County, PA, AB-167 (Sub-No. 623N) (STB served July 19, 1984).

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that Delaware & Hudson Railway (“D&H”) held over that line. Earlier this year, D&H filed and obtained authority to discontinue trackage rights on approximately 670 miles of rail line, including the portion of the Lehigh Secondary Track that is the subject of Riffin’s Motion and was part of the July 19th Decision. See Del. & Hudson Ry. -- Discontinuance of Trackage Rights -- in Broome County, NY, AB 156 (Sub-No. 27X)(STB served July 2, 2015). On September 22, 2015, D&H filed a notice of consummation of its discontinuance authority, which notice included the portion of the Lehigh Secondary Track in Catasauqua, Pennsylvania that is the subject of Riffin’s Motion, *i.e.*, that portion between MP 96.709 and MP 98.0. On October 5, 2015 and consistent with the July 19th Decision, Conrail, as the owner of the relevant line segment and holder of the common carrier obligation filed its abandonment consummation notice. Riffin has now moved to strike Conrail’s abandonment consummation notice.

Mr. Riffin’s Motion is based solely on his conjecture that Conrail was not the owner of the line between MP 96.709 and MP 98.0 because that line had been transferred to NSR as part of the Conrail transaction.³ However, Mr. Riffin fails to provide any evidence to substantiate his claim that the common carrier obligation over that segment was transferred to NSR at any time. In contrast, and as explained by Conrail in footnote 1 of its October 5, 2015 notice of consummation and reaffirmed in Conrail’s filing of November 17, 2015, NSR does not own the line or hold the common carrier obligation. By this letter, NSR is verifying⁴ Conrail’s statements and confirms that it has not acquired ownership of the line or the common carrier obligation over it.⁵

In conclusion, none of Riffin’s unsubstantiated and self-serving claims establish a basis for striking Conrail’s properly filed notice of consummation. The claim that NSR owns the line segment from MP 96.709 to MP 98.0 or the common carrier obligation over that segment is simply factually incorrect. Thus, the Board should reject Riffin’s Motion. Conrail was the line’s

³ CSX Corp. et al. - Control --- Conrail Inc. et al., 3 S.T.B. 196 (1998)(“Conrail Transaction”).

⁴ See attached verification of John H. Friedmann, Vice President Strategic Planning, Norfolk Southern Corporation.

⁵ The line itself was never listed in any of the assets that were transferred from Conrail to NSR. Furthermore, the mere fact that NSR’s prior counsel raised NSR ownership claims arising from a completely different line involved in the Conrail Transaction in a completely different proceeding (FD 34963) does not establish that the line at issue in the October 5 notice of consummation is owned by NSR, has previously been claimed to be owned by NSR, or was transferred to NSR as part of the Conrail Transaction.

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rightful owner, had the common carrier obligation over it, and has lawfully consummated its abandonment consistent with the July 19th Decision.

Respectfully submitted,



William A. Mullins
Attorney for Norfolk Southern Railway Company

cc: Parties of Record

VERIFICATION

I, John Friedmann, verify under penalty of perjury that I have read Norfolk Southern Railway Company's letter in response to James Riffin's November 2, 2015 motion to strike and that the facts stated therein are true and correct. Further, I certify that I am qualified and authorized to verify the letter.



John H. Friedmann
Vice President Strategic Planning
Norfolk Southern Corporation